Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 445 /2005

PETITIONER

R.R. No. 560/05
Presented by Shri A.U. Asgar
dated 08.02.05

Raghuveer Singh Gond,
S/o Shri Pitamber Gond,
Aged about 34 years,
R/o Bajrangpur, Navagaon,
Ward No.1, Rajnandgaon (C.G.)

-Versus-

RESPONDENTS :

1. Union of India,
Through the Secretary, Ministry
Of Consumer Affairs, Food & Public
Distribution, New Delhi.

2. State of Chhattisgarh,
Through the Secretary, Department
Of Food, Public Distribution & Consumer
Protection, Mantralaya, Dau Kalyan Singh
Bhawan, Raipur (Chhattisgarh).

3. Collector,
Rajnandgaon (Chhattisgarh).

4. Food Controller (Food Officer),
Office of the Collectorate,
Rajnandgaon (Chhattisgarh).

RECEIVED COPY
Vijay Singh
Govt. Counsel
8.12.2005

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

1. PARTICULAR OF THE PETITIONER :
As per cause title.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

WRIT PETITION NO. 445 OF 2005

WRIT PETITION NO. 578 OF 2005

WRIT PETITION NO.1034 OF 2005

WRIT PETITION NO.1558 OF 2005

WRIT PETITION NO. 1518 OF 2005

WRIT PETITION NO.2150 OF 2005

WRIT PETITION NO.2316 OF 2005

WRIT PETITION NO.1397 OF 2005

WRIT PETITION NO.2600 OF 2005

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

I agree

HON'BLE SHRI SUNIL KUMAR SINI

Sd/-
Sunil Kumar Sinha
Judge

POST FOR ORDER: 06/09/2005

Sd/-
Chief Justice

ev

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

WRIT PETITION NO. 445 OF 2005

Raghuveer Singh Gond

Vs.

Union of India and others

WRIT PETITION NO. 578 OF 2005

Ambika Prasad Rajwade and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.1034 OF 2005

Ajay Mishra and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.1558 OF 2005

Ramnarayan Markandey and others

Vs.

Union of India and others

WRIT PETITION NO. 1518 OF 2005

Kapil Dev and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.2150 OF 2005

Tulsi Ram and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.2316 OF 2005

Nain Das Gaikwad and others

Vs.

Union of India and others.

WRIT PETITION NO.1397 OF 2005

Mahamaya Swayatt Sahkarita Prathmik Upbhokta Bhandar

Vs.

State of Chhattisgarh and others.

WRIT PETITION NO.2600 OF 2005

Bastar Zila Thok Upbhokta Bhandar Maryadit

Vs.

The State of Chhattisgarh and others

Mr. Kanak Tiwari, Sr. Adv. with Mr. Rahul Jha, Mr. P.K.C. Tiwari, Sr. Adv. with Mr. Shashibhushan, Mr. Prashant Jayaswal, Sr. Adv., with Mr. Ali Asgar, Mr. Manindra Shrivastava, Sr. Adv. with Mr. Amrito Das, Mr. Rajesh Pandey, Mr. Rajiv Shrivastava, Mr. Yashwant Tiwari and Mr. Sudhir Verma, learned counsel for the petitioner..

Present: Thakur Vijay Singh, Assistant Solicitor General for the Union of India.

Mr. Prashant Mishra, Additional Advocate General, for the State of Chhattisgarh.

ORDER

(Passed on 6th of September, 2005)

The following Order of the Court was passed by

A.K. Patnaik, CJ: -

All these writ petitions under Article 226 of the Constitution of India relate to the Chhattisgarh Public Distribution System (Control) Order, 2004 made under the Essential Commodities Act, 1955 were heard analogously and are being disposed of by this common order.

(2) Under Section 3 of the Essential Commodities Act, 1955 *(for short "the Act")* the Central Government has been vested with the power to make orders providing for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. The Central Government delegated this power to the State Governments under Section 5 of the Act by an order dated 9th of June, 1978 in relation to food stuffs subject to such conditions as specified in the said order. On 23rd of June 2001 the

and the fair price shops are proposed to be allotted to agencies specified in the said Order 2004. Aggrieved, the petitioners have challenged the provisions of the Order 2004 on different grounds and/or the orders of the authorities proposing to cancel the licences of the petitioners for running the fair price shops.

(3) Mr. Prashant Jayaswal, Sr. Advocate, assisted by Mr. Ali Asgar learned counsel appearing for the petitioner in Writ Petition No.445 of 2005 submitted that the petitioner is a private person and the agreement between the petitioner and the State Government relating to the fair price shop being run by the petitioner provided in Clause (15) that the agreement could be terminated only for breach of the conditions of the agreement by the petitioner and hence the allotment of fair price shop to the petitioner and the licence of the petitioner for running the fair price shop cannot be cancelled by the State Government unless it is established that the petitioner has committed some breach of the agreement. He submitted that though there is no allegation that the petitioner has committed any breach of the agreement, the authorities are now proposing to cancel the allotment of fair price shop to the petitioner as well as the licence for the fair price shop of the petitioner under the Order 2004. Mr. Prashant Mishra, learned Additional Advocate General, for the State of Chhattisgarh, on the other hand, submitted that the allotment as well as the licence of the petitioner for running the fair price shop will have to be cancelled in accordance with the provisions of Clause 9 (1) of the Order 2004.

(4) We are of the considered opinion that the cancellation of the fair price shop is not to be made under Clause (15) of the agreement between the petitioner and the State Government for running the fair price shop but because of supervening change of law. The Order 2004 is a

State Government of Chhattisgarh made the Chhattisgarh (Khadya Padarth) Sarvajanik Nagrik Poorti Vitran Scheme, 2001 in exercise of such delegated power under Section 3 of the Act for distribution of different foodstuffs through fair price shops. Pursuant to said Scheme of 2001, the State Government entered into agreements with the petitioners and also issued licences in favour of the petitioners for running fair price shops at different place in the State of Chhattisgarh. On 31st of August, 2001 the Central Government made the Public Distribution System (Control) Order, 2001 under Section 3 of the Act providing for distribution of food grains through fair price shops and provided therein that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of essential commodities and shall issue the licences to the fair price shop owner under the said order laying down the duties and responsibilities of the fair price shop owners. Accordingly, the State Government made a fresh order under Section 3 of the Act by a notification dated 23rd of December, 2004 called the Chhattisgarh Public Distribution System (Control) order, 2004 *(for short "the Order 2004").* Clause 9 (1) of the Order 2004 makes provisions regarding allocation of fair price shops in the State of Chhattisgarh and is extracted hereunder:

> **"9. Allocation of fair price shops**
>
> **(1)** Fair Price Shop run by Large Aadim jati Multipurpose Cooperative Societies (LAMPS), Primary credit cooperative societies, forest protection committees, self help groups, Gram Panchayats and other cooperative societies shall be continued but not run by the private persons. Within six months from commencement of this Order, Fair Price Shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in sub rule (3) and (4) of rule 9."

In accordance with provisions of Clause 9(1) of the Order 2004, quoted above, the licences issued to the petitioners are proposed to be cancelled

statutory order made under Section 3 of the Act and Clause 9 (1) of the Order 2004 inter alia provides that within six months from the commencement of the Order, fair price shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in the order. Hence, the cancellation of the fair price shop of the petitioner who was a private person was to be done by virtue of the provisions in Clause 9 (1) of the Order 2004. In other words, it is the change of law after the agreement was made between the petitioner and the State Government for running of the fair price shop by the petitioner on account of which the agreement has to be cancelled. Section 56 of the Indian Contract Act, 1870 provides that a contract do an act which, after the contract is made, become impossible, or, by a reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Hence, the contract between the petitioner and the State Government in so far as it provides for running of the fair price shop by the petitioner who is a private person would become unlawful after expiry of six months period from the date of enforcement of the Order 2004 and would therefore, become void and will have to be cancelled. This is thus not a case of cancellation of a fair price shop for breach of agreement but a case of cancellation of fair price shop of the petitioner due to change of law.

(5) Mr. Jayaswal, learned counsel for the petitioner, next submitted that the Order 2004 is discriminatory and violative of Article 14 of the Constitution of India inasmuch as it provides that private persons would not be allowed to run any fair price shop and only the agencies such as co-operative societies as specified in the Order 2004 would be allowed to run the fair price shops. He cited the decision of the Gujarat High Court in **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another, AIR 1961 Gujarat 38,** in which it has been held that the decision of the State to entrust

wholesale distribution to the Co-operative Societies to the exclusion of other licence holders amounted to discrimination and could not be justified on any reasonable principles of classification and was thus violative of the provisions of Article 14 of the Constitution. He submitted that the only reason given in the return filed by the State of Chhattisgarh for excluding private persons from running fair price shops and for entrusting fair price shops to Co-operative Societies and other agencies specified in the Order 2004 is that some complaints of malpractices and irregularities by fair price shops run by private persons have been registered in the State of Chhattisgarh during the years 2001 – 2002, 2002-2003 and 2003- 2004. He submitted that the statements Annexure-R/1 annexed to the return would show that cases have also been registered against Co-operative Societies and other agencies running fair price shops in the State of Chhattisgarh during the years 2001-2002, 2002 – 2003 and 2003-2004. He argued that there was, therefore, no justification for excluding private persons from running fair price shops and at the same time allowing Co-operative Societies and other agencies specified in the Order 2004 to run fair price shops. He cited the judgment of the Gujrat High Court in **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** (supra) in which the Gujrat High Court has held that classification of individuals and Co-operative Societies and cancelling the licences of the individuals only has been held to be having no rational nexus with the object sought to be achieved by the Act.

(6) Mr. Manindra Shrivastava, Sr. Advocate assisted by Mr. Amrito Das, leaned counsel appearing for the petitioner in Writ Petition No.578 of 2005, further submitted that the statistics given by the State Government in Annexure-R/1 annexed to the return regarding number of cases of malpractices and irregularities registered against fair price shops for the years 2001-2002, 2002-2003 and 2003-2004 are misleading, as these

statistics do not disclose the number of private persons who have been running fair price shops during these three years and the number of Co-operative Societies which have been running fair price shops during these three years. He argued that in the State of Chhattisgarh the number of fair price shops run by the private persons is much larger than the number of fair price shops run by the Co-operative Societies and, therefore, the number of complaints in the case of private persons running fair price shops are bound to be numerically more than the number of complaints against Co-operative Societies running the fair price shop s. He further argued that the State has not indicated in the return whether the complaints against private persons were examined and if so the result of the examination. He vehemently argued that the Court should not therefore rely on the statistics given by the respondent/State in the statements annexed to the return as Annexure-R/1.

(7) Mr. Rajesh Pandey learned counsel appearing for the petitioner in Writ Petition No.1034 of 2005 reiterated the aforesaid contention that the exclusion of private persons from running fair price shops by the Order 2004 was discriminatory and violative of Article 14 of the Constitution. He submitted that one of the objects indicated in the preamble of the Constitution is social justice for the people of India and the classification adopted by the Order 2004 classifying private persons separately from Co-operative Societies and other agencies specified in the Order 2004 is not consistent with this object of social justice mentioned in the preamble of the Constitution and is therefore irrational and the Order 2004 has to be held as violative of the right to equal protection of laws guaranteed under Article 14 of the Constitution of India. In support of this submission he relied on the decision of the Supreme Court in **Atam Prakash Vs. State of Haryana and others, AIR 1986 SC 859**, in which it has been held that a classification adopted by the legislature in the statute which is not in tune with the socialist

goal set out in the Preamble and the Directive Principles enumerated in Part-IV of the Constitution and the Constitution is per se illegal and cannot be permitted. He also relied on the decision of the Supreme Court in **LIC of India and another Vs. Consumer Education and Research Centre and others, AIR 1995 SC 1811.** He vehemently argued that private persons in the State of Chhattisgarh have been excluded from running fair price shops by the Order 2004 and thereby deprived of their only means of livelihood and such exclusion of private persons for running fair price shops was inconsistent with the goal of social justice in the Constitution and the Order 2004 was thus discriminatory towards individual private persons and was violative of Article 14 of the Constitution.

(8) Mr. Rajiv Shrivastava learned counsel appearing for the petitioner in Writ Petition No.1558 of 2005 also reiterated the submission that the provision made in the Order 2004 excluding private persons from running fair price shops is discriminatory and violative of Article 14 of the Constitution. He submitted that the classification is not only unreasonable but also unfair and has no nexus with the object of Section 3 (1) of the Act namely distribution of essential commodities at fair prices in an equitable manner.

(9) Mr. Kanak Tiwari, Sr. Advocate, assisted by Mr. Rahul Jha learned counsel appearing for the petitioner in Writ Petition No.1518 of 2005 submitted that a scheme for public distribution of essential commodities through fair price shops may give preference to the Co-operative Societies but it should also provide that where Co-operative Societies are not available in any area, private persons can be allowed to run fair price shops or where consumer Co-operative Society, available in a particular area, refuses to run the fair price shop, private persons in the area may be allowed to run a fair

price shop. He submitted that in **M.P. Ration Vikreta Sangh, Jabalpur and others Vs. State of Madhya Pradesh and another, AIR 1981 MP 203,** clause 2 of the Scheme framed by the Madhya Pradesh High Court in the year 1981 which provided that preference would be given to Co-operative Societies in the matter of appointment of agents for running fair price shops was challenged on the ground that it was violative of Article 14 of the Constitution and the Division Bench after taking note of the concession of the learned Advocate General that Cooperative Societies in clause 2 mean only a consumers' Co-operatives held that the scheme seeks to prefer the consumer societies in the matter of appointment of the agents for running fair price shops and it is only when such societies refuse to accept appointment as agents that others can be considered for appointment. He also cited the decision of the Supreme Court in **Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others, AIR 1981 SC 2001,** wherein the Supreme Court has held that the preference given to consumers' co-operative societies for running fair price shops for distribution of food stuffs was not violative of Article 14 of the Constitution of India. He argued that the total exclusion of the private persons from consideration for appointment as agents for running fair price shops would be violative of Article 14 of the Constitution.

(10) Mr. Yashwant Tiwari learned counsel appearing for the petitioners in Writ Petition No.2150 of 2005 submitted that no exercise has been undertaken by the State Government to find out how many private persons have actually resorted to by mal practices. He further submitted that most of the Co-operative Societies in the State of Chhattisgarh are running at a loss and therefore if the Co-operative Societies in the State of Chhattisgarh are entrusted with the work of distribution of essential commodities through fair price shops, they will not be able to efficiently handle the said work. He

argued that total exclusion of persons from carrying on the business of fair price shops is discriminatory and violative of Article 14 of the Constitution inasmuch as it affects the rights of the individuals to equality.

(11) Mr. Sudhir Verma learned counsel appearing for the petitioner in Writ Petition No.2316 of 2005 submitted that those private persons who have indulged in mal practices while carrying on the business of fair price shops have now constituted new Co-operative Societies and would be greatly benefited from the provision in clause (9) of the Order 2004 that the specified agencies including Co-operative Societies instead of private persons would be allowed to run fair price shops. He submitted that the classification made by Clause (9) of the Order 2004 between private persons and Co-operative Societies and other agencies specified in the Order 2004 is unreasonable inasmuch as there is no rational nexus between the intelligible differentia of such classification and the object of distributing food stuffs and other essential commodities through fair price shops at fair prices sought to be achieved by Order 2004. Mr. Verma submitted that the exclusion of individual private persons is therefore arbitrary, discriminatory and violative of Article 14 of the Constitution. He relied on the decision of the Supreme Court in **Onkar Lal Bajaj and others Vs. Union of India and another, (2003) 2 SCC 673** to the effect that Article 14 guarantees to everyone equality in law and arbitrary exercise of executive powers can be quashed by the Court in exercise of the power of judicial review.

(12) Mr. Prashant Mishra, Additional Advocate General, assisted by Mr. Sumesh Bajaj, learned Dy. Govt. Advocate, for the State of Chhattisgarh, on the other hand, relying on the reply filed on behalf of the State of Chhattisgarh in Writ Petition No.445 of 2005 submitted that before the State of Chhattisgarh came into existence in November, 2000, the Madhya

Pradesh Sarvajanik Nagrik Vitaran Scheme, 1991 was in force under which fair price shops were being allotted to Co-operative Societies for public distribution of essential commodities at fair prices, but in the year 2001 when the State Government decided to extend the Public Distribution System Network found that due to the financial constraints Co-operative Societies were not in a position to run the additional fair price shops and hence made a provision for allotment of fair price shops to private persons in the Scheme 2001 and such private persons were appointed to run fair price shops on the recommendations of the Minister of the Food Department, Government of Chhattisgarh by the Food Inspector. He submitted that after allotment of fair price shops to such private persons, however, there were complaints of mal practices by such private persons running fair price shops. He referred to the statements annexed to the reply as Annexure-R/1 to show the numbers of cases registered against the fair price shops run by private persons in the years 2001-02, 2002-03 and 2003-04. He further pointed out that in a PIL Writ Petition (Civil) No.196 of 2001 filed by the People's Union for Civil Liberties, the Supreme Court also passed some orders on 28th of November, 2001, 8th of May 2002 and 2nd of May 2003. He submitted that by the order dated 2nd of may 2003 the Supreme Court issued some directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are supplied food grains and to cancel the licences of those licences who do not keep their shops open throughout the month, fail to provide food grain to BPL families strictly at BPL rates, keep the cards of BPL households with them, make false entries in the BPL cards, engage in black-marketing, siphon away food grains to the open market or hand over such ration shops to such other person/organizations. He submitted that the State Government has a constitutional duty and obligation to protect the poor persons against malnutrition and hunger and to comply with the orders passed by the

Supreme Court in the aforesaid case and since it came to the knowledge of the State Government that private persons running fair price shops are not distributing the commodities to the persons living below poverty line and are not providing essential commodities to Anthyodaya and Annapoorna beneficiaries as per their entitlement and were resorting to the mal practices mentioned in the aforesaid orders of the Supreme Court in Writ Petition (Civil) No.196 of 2001, the State Government took the view that a private individual should no longer be allowed to run a fair price shop and that fair price shops should be run by the Co-operative Societies and other agencies specified in the Order 2004. He submitted that such exclusion of private persons altogether from running fair price shops as agents of the State Government was based on a reasonable classification of private persons who were not suitable to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 who were suitable to run fair price shops is based on an intelligible differentia having rational nexus with the object to be achieved by the Order 2004 namely distribution of food stuffs and other essential commodities at fair price shops through the Public Distribution System of the State Government. He cited the decision of the Supreme Court in **In re Kerala Education Bill, 1957** for the proposition that while article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and submitted that the classification under the Order 2004 of private persons who have not been allowed to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 which have been allowed to run fair price shops is a reasonable classification and the Order 2004 is not hit by Article 14 of the Constitution.

(13) In re Kerala Education Bill, 1957 (supra) cited by Mr. Mishra the Supreme Court after referring to its earlier decisions on the true meaning,

scope and effect of Article 14 of the Constitution, quoted the following passage from its earlier decision Mohd. Hanif Qureshi Vs. State of Bihar, AIR 1958 SC 731:

> "It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different basis, namely, geographically or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those case where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

Thus, the law laid down by the Supreme Court is that equal protection of Article 14 of the Constitution forbids class legislation but does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled; (i) the classification must be founded on an intelligible differentia which

distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational nexus to the object sought to be achieved by the statute in question. These propositions have been reiterated in the judgment of the Gujrat High Court in **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** (supra) cited by Mr. Prashant Jayaswal, and it has been further explained in the said decision of the Gujrat High Court that sometimes the law itself may not make the classification but may lay down a policy and vest a discretion in the executive to make a classification for the purpose of administering the law and in such cases the power given to the executive would import a duty on it to classify the subject matter of the legislation in accordance with the policy indicated in the statute and the discretion has to be exercised in accordance with the policy to effectuate which the discretion is given and it is in relation to that policy that the propriety of the classification has to be tested and if the executive proceeds to classify persons or things on a basis which has no rational relation to the policy of the legislature, its action can certainly be struck down as offending against the equal protection clause. In the said decision, the Gujrat High Court further held that in the Act the legislature has laid down the legislative policy and has left it to the Central Government or the State Government to work out the details of that policy within the framework to be found in the four corners of the Act and accordingly make orders under Section 3 of the Act in accordance with the policy laid down in the Act. The observations of Bhagwati, J who delivered the said judgment of the Gujrat High Court on behalf of the Division Bench is quoted herein below:

> "Whether this classification can stand the test of Article 14 must depend on various factors such as the background against which the State action has been taken, the nature and character of the commodity and business sought to be regulated by such action and the object which the legislature had in view in enacting the said Act in the execution or

administration of which the classification has been made. When we turn to the provisions of the said Act we find that the ambit and character of the said Act is such that the Legislature can do no more than lay down the legislative policy and leave it to the executive to work out the details of that policy within the framework to be found in the four corners of the said Act, for the executive would be in a better position to judge the needs and exigencies of the situation. The preamble and the body of the sections clearly formulate the legislative policy and the details of that policy are left to be worked out by delegating them to the Central Government or the State Government or other subordinate officers or authorities within the framework of that policy. The Legislature has in the preamble and the body of the Sections declared the policy of the law and the legal principle which is to guide and control the executive in the exercise of its powers under the provisions of the said Act or any Orders made under the said Act. That principle is the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices. This is the objective indicated in the said Act and whenever the executive in exercise of its powers under the provisions of the said Act or any orders made under the said Act or any orders made under the said Act makes a classification, the propriety of the classification must be tested in relation to that objective. Whatever is done by the executive in pursuance of or in exercise of its powers under the provisions of the said Act o any Order made under the said Act is ultimately traceable to the said Act and must derive its sustenance and force from the said Act and must, therefore, be in conformity with the legislative policy or principle or objective formulated in the said Act. The classification made by the State in the present case must, therefore, in order to successfully meet the challenge of Article 14, bear a just and rational relation to the object sought to be achieved by the said Act, namely, the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices."

(14) Applying the aforesaid law as has been lucidly enunciated by Bhagwati, J in the said judgment of the Gujrat High Court **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** (supra), the Order 2004 has been made for achieving the objects mentioned in Section 3(1) of the Act and therefore the challenge to the Order 2004 under Article 14 of the Constitution in these writ petitions have to be examined by reference to the objects mentioned in Section 3(1) of the Act. If the classification made by the Order 2004 has no rational nexus with the said objects mentioned in Section 3(1) of the Act, the classification would be an unreasonable classification and would have to be struck down by the Court as ultra vires the Article 14 of the Constitution. On the other hand, if the classification made by the Order 2004 has a rational nexus with the said objects mentioned in Section 3 (1) of the Act, the classification has to be held as reasonable classification and not hit by the equal protection clause in Article 14 of the Constitution of India. Further more, as has been held by the Gujrat High Court in the aforesaid case whether the classification made by the Order 2004 can stand the test of Article 14 would depend upon various factors such as the background in which the Order 2004 has been issued and the nature and character of the commodities and business sought to be regulated.

(15) For finding out the background in which the Order 2004 has been issued by the State Government of Chhattisgarh, we have to refer to the return filed on behalf of the State Government of Chhattisgarh. It is stated in the said return that before the commencement of the Scheme 2001, fair price shops could be allotted to Co-operative Societies only, as per the provisions of the Madhya Pradesh Sarvajanik Nagrik Scheme, 1991. It is further stated in the return filed on behalf of the State Government that in the year 2001 the State Government decided to extend the Public Distribution System network but due to the financial constraints the Co-operative

Societies were not in a position to run the additional fair price shops and hence a provision was made in the Scheme 2001 for allotment of fair price shops to private persons. After the allotment of fair price shops to private persons, however, the number of cases of irregularities registered against fair price shops increased enormously. Along with the return statements showing the number of cases registered in the years 2001-2002, 2002-2003 and 2003-2004 against fair price shops run by Co-operative Societies and against fair price shops run by private persons has been annexed as Annexure-R/1. We find from the said statements in Annexure-R/1 annexed to the return of the State Government that the total number of cases registered against fair price shops run by private persons and different agencies during the years 2001-2002, 2002-2003 and 2003-2004 are as follows:

Year	Private Persons	Co-operative Societies	Panchayat	Upbhokta Bhandar	Marketing Society
2001-2002	133	54	0	28	0
2002-2003	357	54	0	1	0
2003-2004	710	167	1	16	4

It will be clear from the figures indicated in the chart above that the number of complaints of irregularities against fair price shops run by private persons was 133 in the year 2001-2002, 357 in the year 2002-2003 and 710 in the year 2003-2004. The aforesaid chart will also show that the number of complaints against fair price shops run by other agencies such as Co-operative Societies, Panchayat, Consumer Co-operative and Marketing Societies have been comparatively less. Thus, the number of complaints of irregularities against fair price shops run by private persons is not only much more than the number of complaints received against other agencies such as

Co-operative Societies, Panchayat, Consumer Co-operatives and Marketing Societies, but such number of complaints against fair price shops run by private persons have been increasing manifold year by year.

(16) In the return filed on behalf of the State Government of Chhattisgarh it is also stated that in *Writ Petition No.196 of 2001, People's Union for Civil Liberties Vs. Union of India and others* the Supreme Court has been monitoring the implementation of the Public Distribution System and other welfare schemes through its appointed Commissioners and by order dated 2nd of May 2003 the Supreme Court has directed that the licences of fair price shop keepers be cancelled if they do not keep their shops open throughout the month during the stipulated period, fail to provide grain to BPL and Antyodaya families strictly at fixed rates and no higher, keep the cards of BPL households with them, make false entries in the BPL and Antyodaya cards, engage in black marketing, siphon away of grains to the open markets hand over such ration shops to other persons/functionaries, or BPL and Antyodaya are not supplied food grains as per their entitlement. It is further stated in the return that Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court made extensive visits throughout State, interacted with the beneficiaries and thereafter submitted a report to the Commissioner appointed by the Supreme Court and the Commissioner appointed by the Supreme Court sent a communication dated 20/04/2004 to the Chief Secretary, Govt. of Chhattisgarh, mentioning therein that the advisor has highlighted several irregularities in the implementation of mid-day meal and Tribal Development Projects (TDPs). The relevant portion of the report dated 03/04/2004 of the Advisor of the Commissioner, Mr. Biraj Patnaik regarding the Public Distribution System in the State of Chhattisgarh is reproduced herein below:

"Public Distribution System:

The situation with regard to the PDS is distressing in the entire district and as the reports that I have enclosed as annexures reflect a breakdown of the system due to lack of monitoring. I had in my earlier reports and in my personal briefings appraised you about the positive steps which the State Government had taken including the creation of a food security fund and the increase in the subsidy given to the lead societies and commission to the PDS shops. While welcoming this, I had however cautioned that unless the governance issues in the districts are addressed, this progressive step would have minimal impact. The situation in Manendragarh is a testimony of this failure. I am enclosing the complaints and a set of affidavits that I have received with regard to the PDS shops in the panchayats – Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur.

It is clear from the aforesaid extract on the Public Distribution System in Manendragarh Block of Korea district that in Manendragarh Block Public Distribution System had broken down and this finding of the Advisor was based on complaints and the set of affidavits that the said Advisor had received with regard to the PDS shops in Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur Panchayats. The copies of the said complaints and affidavits have also been annexed to the return along with Annexure-R/6 and a reading of the said complaints and affidavits would show that lot of irregularities were being committed by the fair price shops. The aforesaid report relates to Manendragarh Block of Korea district but was a sample before the State Government as to how badly the fair price shops were being run. In paragraph 38 of the return it is stated that the State Government received information that there are flagrant violation of the terms and conditions of the grant as well as other provisions of the Scheme and the fair price shop owned by private individuals were opened well after the appointed time and

closed well before the appointed time and the consumers are finding it difficult to obtain their rations and further that individual private shop keepers do not maintain sufficient stocks and siphon away the food grains of the fair price shops to shops of local traders. It is this unhappy experience of allowing individual private persons to run fair price shops in the State of Chhattisgarh during the years 2001-2002, 2002-2003 and 2003-2004 which had prompted the State Government to exclude private persons altogether from running fair price shops under the Order 2004. Section 3(1) read with the order of delegation under Section 5 of the Act enables the State Government to make an order for securing the equitable distribution of any essential commodity and their availability at fair prices and a plain reading of the Order 2004 also shows that the object of the Order 2004 is to distribute foodstuffs and other essential commodities to ration card holders through fair price shops under Public Distribution System and if the experience in the State of Chhattisgarh is that the aforesaid object cannot be achieved through fair price shops owned by private persons, exclusion of private persons from running fair price shops under the Order 2004 has rational nexus with the object sought to be achieved by the Act as well as the Order 2004. The contention of the petitioners, therefore, that the classification in the Order 2004 excluding private persons altogether from running fair price shops while allowing other agencies specified therein to run the fair price shops is unreasonable and is hit by Article 14 of the Constitution has no merit.

(17) In **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** cited by Mr. Prashant Jayaswal, the State has decided as a matter of policy to entrust wholesale distribution of sugar to Co-operative Societies to the exclusion of other licence-holders and this decision of the State was challenged by the petitioners in that case on the ground that it was discriminatory and violative of the equal protection clause of Article 14 of the

Constitution. The contention of the petitioner in the said case was that the classification of licence-holders into those who are Co-operative Societies and those who are not for the purpose of wholesale distribution of sugar was unrelated to the policy or object of the Act. The classification was sought to be justified in that case in the reply filed by the Collector on the ground that the State had decided to entrust wholesale distribution of sugar to Co-operative Societies to the exclusion of other licence-holders in order to put the distribution of sugar on more satisfactory basis and to promote and encourage the work of Co-operative Societies. The Supreme Court held that the promotion and encouragement of the work of Co-operative Societies cannot afford a reasonable basis for classification as it would have no nexus with the policy or object of the Act which is to maintain or increase supplies of sugar and to secure its equitable distribution and availability at fair prices. The Supreme Court also held that putting distribution of sugar on more satisfactory basis may afford a reasonable basis for classification, but the State had not indicated to the Court in the affidavit as to how and in what manner the wholesale distribution of sugar through the Association formed of the licence-holders was unsatisfactory and how and in what way it will put the distribution of sugar on more satisfactory basis if it is entrusted only to Co-operative Societies to the exclusion of other licence-holders. The Supreme Court in particular held that the State had not placed any facts before the Court on the basis of which it could be said that wholesale distribution of sugar would be put on more satisfactory basis by entrusting it to Co-operative Societies in preference to other licence-holders. In the present case, on the other hand, the State in its return has given facts and figures to show that the whole experiment of entrusting fair price shops to private owners during the years 2001-2002, 2002-2003 and 2003-2004 has not been at all happy and there have been large number of complaints by ration card

holders of irregularities committed by fair price shops owned by private persons. The facts of the present case, therefore, are distinguishable from the facts of the aforesaid decision of the Gujrat High Court in **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** (supra). The exclusion of private persons from running fair price shops in the facts of the present case has a rational nexus with the object of Section 3 (1) of the Act as well as the Order 2004 namely, the distribution of foodstuffs and other essential commodities in equitable manner at fair prices to ration card holders.

(18) For the aforesaid conclusion, we find support in the judgment of the Supreme Court in **Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others** (supra). The facts of that case are that the M.P. Foodstuffs (Distribution) Control Order, 1980 provided for running of fair price shops through retail dealers and the State Government of Madhya Pradesh on 31st of October, 1980 amended the said Control Order by deleting the provisions relating to running of fair price shops through retail dealers and providing for running the fair price shop s under a Government scheme. On 20th of March 1981 the State Government promulgated the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981 under which preference was to be given to Co-operative Societies in appointment of agents for running fair price shops. The M.P. Ration Vikreta Sangh Society and others challenged the said provision of the scheme for giving preference to Co-operative Societies on the ground that the same was violative of Article 14 of the Constitution of India. The Madhya Pradesh High Court upheld the said provision in the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981 for giving preference to consumer Co-operative Societies in appointment as agents for running fair price shops. The judgment of the Madhya Pradesh High Court was challenged by M.P. Ration Vikreta Sangh Society and others before the Supreme Court and the

Supreme Court rejected the challenge under Article 14 of the Constitution of India with the following reasons:

> "We have given a brief outline of the impugned scheme and it cannot be said that it suffers from arbitrariness or is irrational to the object sought to be achieved. The State Government after due deliberation, took a responsible decision to run the fair price shops directly being satisfied that it was necessary to do with the object of distributing foodstuffs at fair prices to the consumers, after taking into consideration the fact that the earlier experiment of running these shops through retail dealers was an utter failure. The scheme has been designed by the State Government by executive action under Art. 162 of the Constitution with a view to ensuring equitable distribution of foodstuffs at fair prices. As already stated, the Court has found in the Sarkari Sasta Anaj Vikreta Sangh case (supra), the entire system of distribution of foodstuffs had collapsed and had become wholly unworkable due to flagrant violations of the provisions of the Control Order by the retail dealers. The action of the State Government in entrusting the distribution of foodstuffs to consumers' co-operative societies, though drastic, was an inevitable step taken in the interests of the general public. The State Government was not bound to give the fair price shops to the retail dealers under a Government scheme. The governmental action in giving preference to consumers' co-operative societies cannot be construed to be arbitrary, irrational or irrelevant."

It will be clear from the aforesaid decision of the Supreme Court that once the Court found that the system of distribution of foodstuffs through appointment of retail dealers was an utter failure and had become wholly unworkable due to flagrant violations of the control order by retail dealers, the Court held that the action of the State Government in entrusting the distribution of foodstuffs to consumers' co-operative societies could not be said to be arbitrary or irrational or unrelated to the object sought to be achieved. In the present case, as we have seen, the experiment of allowing

private persons to run fair price shops has been an utter failure inasmuch as complaints had been received in large numbers from the ration card-holders against the private persons who run the fair price shops and such complaints are growing every year during the years 2001-2002, 2002-2003 and 2003-2004 and for this reason the State Government had in the Order 2004 decided not to entrust the running of fair price shops to individual private persons and instead to other agencies specified in the Order 2004. The exclusion of individual private persons from running fair price shops in the Order 2004 cannot in the facts and circumstances of the case be held to be arbitrary, irrational or unreasonable.

(19) The contention of Mr. Kanak Tiwari, learned Sr. Advocate, for the petitioner, however, is that under the Madhya Pradesh (Foodstuffs) Civil Supplies Public Distribution Scheme, 2001 private persons were not altogether excluded from running fair price shops but preference was to be given to consumer co-operatives for running fair price shops and this would mean that in any area if consumers' co-operative society is not available to run a fair price shop or the consumers' co-operative society refuses to run a fair price shop an individual private person can be allowed to run the fair price shop by the State Government. He submitted that such a provision would not be arbitrary but would be reasonable and thus would not be hit by Article 14 of the Constitution. As we have found above, during the years 2001-2002, 2002-2003 and 2003-2004 a large number of complaints of irregularities against fair price shops owned by private persons from the ration card-holders have been received and such complaints have been growing in number every year and on these facts, it is for the State Government to decide as to whether preference is only to be given to Co-operative Societies and other agencies to run fair price shops and entrust such fair price shops to private individuals in areas where such Co-operative

Societies or other specified agencies are not available or whether to altogether prohibit allotment of fair price shops to the private individuals. This decision to give preference to Co-operative Societies or to altogether discontinue running of fair price shops by private individuals is a policy decision within the domain of the State Government. Once we have found that the classification in the Order 2004 in between private persons, on the one hand, and Co-operative Societies & other agencies specified in the Order 2004, on the other, has a rational nexus with the object sought to be achieved by Section 3 (1) of the Act as well as the Order 2004 namely distribution of foodstuffs and in particular essential commodities at fair prices to the ration card-holders, the Court will have to uphold the classification as valid and reasonable and not violative of Article 14 of the Constitution and it is not within the domain of the Court thereafter to suggest that instead of excluding private persons altogether from running fair price shops only preference should have been given to Co-operative Societies and other agencies specified in the Order 2004 for running fair price shops and individual private persons could also be considered for allotment of fair price shops wherever such Co-operative Societies and other specified agencies were not willing to run fair price shops or were not available. The decision in this regard, in our considered opinion, can that be of the Legislature or the Government and not of the Court. In **State of West Bengal Vs. Anwar Ali Sirkar and another, AIR 1952 SC 75** cited by Mr. Prashant Mishra, Bose, J observed in para 83:

> "This, however, does not mean that judges are to determine what is for the good of the people and substitute their individual and personal opinions for that of the government of the day, or that they may usurp the functions of the legislature. That is not their province and though there must always be a narrow margin within which judges, who are human, will always be influenced by subjective factors their training and their tradition

> makes the main body of their decisions speak with the same voice and reach impersonal results whatever their personal predilections or their individual backgrounds. It is the function of the legislature alone, headed by the government of the day, to determine what is, and what is not, good and proper for the people of the land; and they must be given the widest latitude to exercise their functions within the ambit of their powers, else all progress is barred. But, because of the Constitution, there are limits beyond which they cannot go and even though it falls to the lot of judges to determine where those limits lie, the basis of their decision cannot be whether the Court thinks the law is for the benefit of the people or not. Class of this type must be decided solely on the basis whether the Constitution forbids it."

(20) We may now deal with the novel argument of Mr. Rajesh Pandey, learned counsel for the petitioner that the classification in the Order 2004 is inconsistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution inasmuch as it excludes private persons to earn their livelihood by running fair price shops and for this reason the Order 2004 is violative of the right to the equal protection of law under Article 14 of the Constitution. In support of the submission, he relied on the following observations of Chinappa Reddy, J in **Atam Prakash Vs. State of Haryana and others** (supra):

> "Whatever article of the Constitution it is that we seek to interpret, whatever statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted."

In the aforesaid observations Chinnappa Reddy, J has held that when we consider the question as to whether the statute offends Article 14 of the Constitution, we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV. The Preamble of the Constitution seeks "to secure to all its citizens" justice, social, economic and political. The expression "all its citizens" in the preamble of the Constitution means not only the private persons running fair price shops but also the ration card-holders under the Order 2004 including persons or families below the poverty line and Antodaya families (the poorest families identified by the State Government) and destitute families. Hence, social and economic justice in the Preamble of the Constitution would mean that essential commodities and in particular foodstuffs are distributed to such ration card-holders at fair prices and not at prices beyond their reach. The Directive Principle in Article 47 of the Constitution mandates that the State shall regard the raising of the level of nutrition and the standard of living of its people as among its primary duties. Hence, it is part of the duty of the State to ensure that the foodstuffs and other essential commodities are made available to the people at fair prices and not at prices beyond their reach. If the State Government has found that during the three years from 2001 to 2004 a large number of complaints have been received of irregularities and malpractices adopted by the fair price shops owned by private persons and such complaints have been growing in number year by year, the State Government was justified in providing in the Order 2004 that private persons will not be allowed to run fair price shops as agents of the State Government and such a provision in the Order 2004 would be consistent with the socialist goals in the Preamble of the Constitution and such a classification in the

Order 2004 excluding private persons from running fair price shops would not be violative of Article 14 of the Constitution.

(21) The contention of Mr. Manindra Shrivastava, Mr. Rajesh Pandey, Mr. Rajeev Shrivastava, Mr. Yashwant Tiwari and Mr. Sudhir Verma, however, is that the data given by the State Government in its return as well as Annexutre-R/4 relating to number of cases registered against fair price shops run by private persons and fair price shops run by Co-operative Societies and other agencies should not be relied upon by the Court as the said data does not disclose the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co-operative Societies and other agencies and in the absence of figures of the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co-operative Societies, it is difficult for the Court to find out as to what proportion of fair price shops in either category have resorted to malpractices and irregularities. This contention overlooks the law laid down by the Apex Court in a series of the decisions including **Mohd. Hanif Qureshi and others Vs. State of Bihar** quoted above that there is always a presumption in favour of the statute and the burden is upon him, who attacks it to show that there has been a clear violation of the Constitution and that the Courts must presume that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are bases on adequate grounds. We must presume, therefore, that the State Government while making the Order 2004 has correctly understood and appreciated the failure of the public distribution system through fair price shops run by private persons and has accordingly made the Order 2004 excluding such private persons from running fair price shops through which essential commodities and in

particular foodstuffs are to be distributed to the ration card-holders. If the data furnished in the return of the State Government as well as in Annexure-R/1 on which such understanding and appreciation of the State Government was based was incomplete or incorrect, onus was on the petitioners to furnish additional data before the Court and rebut the presumption of constitutionality in favour of the Order 2004. On whatever materials have been placed before us by the State Government in its reply as well as Annexure-R/1, we have no doubt in our mind that exclusion of private persons from running fair price shops and the Order 2004 cannot be held to be discriminatory and violative of Article 14 of the Constitution.

(22) Mr. Kanak Tiwari learned counsel for the petitioner in Writ Petition No.1397 of 2005 which is a consumer Co-operative Society submitted that Sub Clause (3)(a) of Clause 9 of the Order 2004 provides that allotment of fair price shops in ITDP areas shall be done in order of priority to the following agencies:

(i) Large Aadim Jati Multipurpose Co-operative Societies (LAMPS).

(ii) Gram Panchayats

(iii) Women's Self help groups

(iv) Primary credit co-operative societies

(v) Forest protection committees

(vi) Other co-operative societies,

He submitted that similarly Sub clause 4 (a) of Clause 9 of the Order 2004 provides that allotment of fair price shops in other areas shall be in order of priority to the following agencies:

(i) Gram Panchayats

(ii) Women's Self help groups

(iii) Primary credit co-operative societies

(iv) Other co-operative societies

He submitted that consumer Co-operative Societies fall under the category "other Co-operative Societies" and have thus been placed at the bottom of the priority list for allotment of fair price shops both in ITDP areas and other areas. He submitted that Sub-clause 3(b) of Clause 9 provides for allotment of only 10% of the shops to other Co-operative Societies in ITDP areas and for giving top priority to Co-operative Societies of ex-serviceman Co-operative Societies and also 33% reservation for Forest Protection Committees and Women's Self help groups. He pointed out that similarly Sub-clause 4(b) of Clause 9 of the Order 2004 provides for reservation of 33% of the fair price shops in other areas for Women's Self help groups or other Co-operative Societies run by women and for allotment of fair price shops to Co-operative Societies of ex-serviceman on top priority basis. He vehemently argued that these provisions have been made in the Order 2004 by the State Government mechanically following the recommendations of Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court, without any application of mind as to whether such reservation and priority is permissible under Article 14 of the Constitution. He submitted that the object of Section 3 of the Act and the Order 2004 is to distribute essential commodities at fair prices to ration card-holders and in particular to ensure food security to all vulnerable citizens in the State of Chhattisgarh and the Madhya Pradesh High Court in **Madhya Pradesh Ration Vikreta Sangh, Jabalpur and others Vs. State of Madhya Pradesh, Bhopal and others, AIR 1961 MP 203,** as well as in **Sarkari Sasta Anaj Vikreta Sangh, Tehsil Bemetra and others Vs. State of Madhya Pradesh and others, AIR 1981 SC 2030,** the Madhya Pradesh and the Supreme Court, respectively, have upheld the Madhya Pradesh Food-stuffs (Civil Supply Distribution) Scheme

(1981) providing for giving priority to consumer Co-operatives in the matter of allotment of fair price shops. But this position of law has been ignored altogether by the State Government while accepting the said recommendations of Mr. Biraj Patnaik. He submitted that the petitioner being a consumer Co-operative is apprehensive that on account of such reservations and priorities made in Clause 9 of the Order 2004 the petitioner will not be allotted any fair price shop. In this context he submitted that in **M.P. Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others** (supra) the Supreme Court has further held that there can be no quarrel with the principles laid down in the *Airport Authority case (AIR 1979 SC 1628)* that if the governmental action disclosed arbitrariness, it would be liable to be invalidated as offending against Article 14 of the Constitution. He submitted that the provisions in Clause 9 of Order 2004 giving priority and making reservations in favour of the Women's Self Help Groups, Forest Protection Committees, Co-operative Societies of ex-servicemen are absolutely arbitrary and have no nexus whatsoever with the object sought to be achieved by Section 3 of the Act as well as the Order 2004. Mr. Tiwari also referred to the provisions of Chhattisgarh Co-operative Societies Act, 1960 to show that only LAMPS and consumer Co-operatives are authorized to sell essential commodities in fair price shops and that the Primary Credit Co-operative Societies are not authorized under the provisions of the said Act to sell essential commodities at fair prices.

(23) Mr. Prashant Mishra, learned Additional Advocate General, on the other hand, submitted that it is for the legislature and the Government to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to the ration cardholders and if the State Government has in the Order 2004 decided as to which of the agencies

should be allotted fair price shops and on what priority, the Court should not interfere with the choice of such agencies in the Order 2004.

(24) Mr. Prashant Mishra is right that it is for the Government and the legislature to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to ration cardholders, but such power of the legislature and the Government to choose the agencies is subject to Article 14 of the Constitution. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Hence, the State Government while making an order under Section 3 of the Act may choose the persons, natural or legal, which are to be allotted fair price shops in selling essential commodities including foodstuffs to ration cardholders, but it cannot discriminate between such persons. It has, however, been held by the Supreme Court that Article 14 forbids class legislation but does not forbid reasonable classification and that in order to pass the test of permissible classification two conditions must be fulfilled (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out from the group and (ii) such differentia must have a rational nexus sought to be achieved by the legislature. The object sought to be achieved by the Order 2004 is to distribute essential commodities including foodstuffs at fair prices to ration cardholders. There is no material placed before the Court to show that this object can be better achieved by fair price shops run by the LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative societies, Forest Protection Committees than those run by Consumer Co-operative Societies categorized under "Other Co-operative Societies. Thus, there is no reason for giving priority to LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative societies and Forest Protection

Committees over Consumer Co-operative Societies falling under the category "Other Co-operative Societies" in the matter of allotment of fair price shops either in ITDP areas or other areas. There is, therefore, no rational basis for the classification of the agencies mentioned in Sub-clause (3)(a) of Clause 9 and Sub-clause (4) (a) of Clause 9 of the Order 2004 for the purpose of giving priority in the matter of allotment of fair price shops. The classification made in the said Sub-clauses (3)(a) and (4)(a) of Clause 9 of the Order 2004 of the agencies for the purpose of giving priority in allotment of fair price shops is thus unreasonable and the provision regarding priority in the said Sub-clause (3)(a) and (4)(a) of Clause 9 of the Order 2004 is thus discriminatory and violative of Article 14 of the Constitution. Similarly, there is no rational basis for providing in Sub-clause (3)(b) of Clause 9 for giving priority to Co-operative Societies of Ex-serviceman and for providing 33% reservation for Forest Protection Committees and Women's Self Help Groups in Sub-clause (3)(b) of Clause 9 and Sub-clause 4(b) of Clause 9 of the Order 2004 as no material has been placed before us to show that the Co-operative Societies of Ex-serviceman or Forest protection Committees and Women's Self Help Groups can achieve the object of distribution of essential commodities including foodstuffs at fair prices to ration cardholders better than the Consumer Co-operative Societies falling under "Other Co-operative Societies". In our considered view the specified agencies are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the only consideration that should weigh with the authorities for making the allotment of fair price shops in any area should be as to which specified agency would be able to best achieve the object of Section 3 of the Act and the Order 2004 namely distribution of essential commodities including foodstuffs at fair prices to the ration cardholders. The provisions in Sub-clauses (3)(a) & (3)(b) and (4)(a) &

(4)(b) of Clause 9 of the Order 2004 providing for priority amongst the specified agencies and reservation in favour of some of specified agencies are liable to be struck down as ultra vires Article 14 of the Constitution.

(25) The power to make legislation under Section 3 read with Section 5 of the Act is also subject to the law that may be enforced. Section 2 of the Chhattisgarh Co-operative Societies Act, 1960 contains definitions of the different types of Co-operative Societies and a reading of the different provisions of Section 2 defining different types of Co-operative Societies would show that different types of Co-operative Societies have been defined keeping in mind the object for which the Co-operative Societies are formed. Section 10 (1) of the said Act further provides that the Registrar shall classify all societies under one or more of the heads mentioned therein and Section 10(1-a) further provides that the Registrar may further classify the societies falling under any of the heads specified in sub section (1) as Apex Society, Central Society or Primary Society. Section 31 of the said Act also provides that the registration of the Co-operative Society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things for the purposes for which it was constituted. Hence, unless a Co-operative Society is constituted with the object of distributing or selling essential commodities to its members and to other people in the area, and is registered and classified as such under the said Act, such a Co-operative Society will not be authorized under law to distribute or sell the essential commodities at fair price shops to the ration cardholders. Sub clause (3) and (4) of Clause 9 of the Order 2004 provide for allotment of fair price shops to primary Credit Co-operative Societies and other Co-operative Societies even though primary Credit Co-operative Societies and some of the other Co-

operative Societies are not authorized as per the provisions of the said Act to carry on the activity of distributing or selling essential commodities to ration cardholders and to that extent are illegal.

(26) Mr. Kanak Tiwari, learned counsel for the petitioner further submitted that in sub-Clause 3(c) of Clause 9 of the Order 2004 a provision has been made that sales persons of all fair price shops operating in ITDP areas shall be appointed from the BPL families of local tribal communities and sub-Clause 3(d) of Clause 9 of the Order 2004 provides that 33% of all salespersons in ITDP area should be tribal women. He pointed out that similarly sub-Clause (7) of Clause 9 of the Order 2004 provides that the Scheduled Caste and Other Backward Caste have to be given priority in making appointments of sales person and at least 33% of all the sales persons have to be women and 10% have to be disabled. He vehemently argued that the fair price shop owner is the employer of the sales persons for the fair price shops and the State Government cannot by an order made under Section 3 of the Act force the employer to employ tribal women, Scheduled Caste persons, Other Backward Caste persons and disabled persons as salesmen in the fair price shops. He submitted that in any case such provisions for employing all sales persons of fair price shop in ITDP area from among the BPL families of local tribal communities and all sales persons of fair price shops in other areas from amongst Scheduled Caste and Other Backward Classes are contrary to the law laid down by the Supreme Court that there cannot be 100% reservation in employment in favour of Scheduled Caste, Scheduled Tribe and Other Backward Class. In support of this submission, he cited the decision of the Supreme Court in **Indra Sawhney Vs. Union of India, 1992 Supp. (3) SCC 217.**

(27) Mr. Prashant Mishra, learned Additional Advocate General, on the other hand, submitted that the objective of the provisions in said sub-Clauses (3), (4) and (7) of Clause 9 of the Order 2004 for employing sales persons from among the BPL families of local tribal communities, Scheduled Caste community, OBC community, women and disabled persons is not to make any reservation in their favour in employment but to ensure that the interest of tribals, Scheduled Caste, OBCs. women and disabled are protected while operating the public distribution system.

(28) The Government may make provisions in the Order 2004 for employing sales persons from BPL families, Scheduled caste community, OBC community, women and disabled persons so that the interest of these vulnerable sections of the society are protected while operating the public distribution system, but such provisions in the Order 2004 cannot be discriminatory and violative of Article 14 of the Constitution. We find it difficult to accept that employment of any sales persons in an ITDP area who does not belong to the tribal communities and of any sales person in other areas who does not belong to the Scheduled Caste or OBC communities would be detrimental to the operation of the public distribution system in the ITDP or other areas. Jeevan Reddy, J has held in **Indra Sawhney Vs. Union of India** (supra) that the principal aim of Articles 14 and 16 of the Constitution is equality and equality of opportunity and that clause (4) of Article 16 is a means of achieving the very same objective. Paragraphs 808, 809 and 810 of the judgment of Jeevan Reddy, J which are relevant are quoted herein below:

> "**808.** It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision – though not an exception to clause (1). Both the provisions have to be harmonized

keeping in mind the fact that both are but the re-statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) – conceived in the interest of certain sections of society – should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent assembly, set out in para 693). No other member of the Constituent assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

Even though employment under the fair price shops owned by private agencies and not State agencies may not be covered under Article 16 of the Constitution, any provision made by the State for employment of sales persons in fair price shops run by private or state agencies under the public distribution system of the State Government cannot be discriminatory and violative of Article 14 of the Constitution. As has been held by Jeevan Reddy, J in the aforesaid judgment in the case of **Indra Sawhney Vs. Union of India** (supra) as a normal rule reservation in any employment should not exceed 50% but there may be population inhabiting far flung and remote areas which are out of the mainstream of national life and in view of the

conditions peculiar to these areas there may be need for relaxation of the strict rule of 50% reservation in employment in these areas. Applying this test, more than 50% reservation for tribal communities for employment of sales persons in ITDP areas may be justified but 100% reservation in the matter of appointment of sales persons of fair price shops from tribal communities, we are afraid, will be discriminatory and violative of Article 14 of the Constitution. The provision in Sub clause (3)(c) or Clause 9 of the Order 2004 which provides for appointment of sales persons of fair price shops in ITDP areas from the BPL families of local tribal communities is therefore ultra vires Article 14 of the Constitution. Similarly, the provision in Sub clause (7) of Clause 9 of the Order 2004 that the sales persons in fair price shops in other areas will be appointed on the basis of priority only from amongst scheduled caste and other backward caste is a provision of 100% reservation for scheduled caste and other backward caste and is ultra vires Article 14 of the Constitution. But the provisions for reservation in favour of the women upto 33% in the matter of appointment of sales persons of fair price shops cannot be held to be ultra vires Article 14 of the Constitution. Similarly, the provision of 10% reservation for disabled persons for employment in fair price shops in sub clause (7) of Clause 9 of the Order 2004 cannot be held to be ultra vires Article 14 of the Constitution.

(29) Mr. P.K.C. Tiwari learned counsel for the petitioner in Writ Petition No.2600 of 2005 submitted that the petitioner is a Co-operative Society and Clause 9(1) of the Order 2004 provides that fair price shops will be continued to be run by Co-operative Societies and yet the order dated 13/05/2005 in Annexure-P/1 has been issued to the petitioner cancelling the allotment of fair price shop in favour of the petitioner. We fail to see as to why the impugned order has been issued cancelling the allotment of fair price shop in favour of the petitioner when a clear provision has been made

in Clause 9(1) of the Order 2004 for continuance of Co-operative Societies as fair price shops. If under the agreement between the petitioner and the State Government the petitioner is to continue as fair price shop for certain tenure, the tenure of the petitioner to run fair price shop cannot be shortened by cancelling the allotment of the fair price shop in favour of the petitioner except in accordance with terms of the agreement between the petitioner and the State Government.

(30) It was next contended by Mr. Prashant Jayaswal, learned counsel appearing for the petitioner that the Order 2004 in so far as it excludes private persons from running fair price shops is violative of the fundamental right of the petitioner under Article 19 (1)(g) of the Constitution to carry on any trade or business. He cited the judgment of the Andhra Pradesh High Court in **District Collector, Hyderabad Vs. M/s. Ibrahim and Company and others, AIR 1966 Andhra Pradesh 310.** Mr. Rajesh Pandey learned counsel for the petitioner similarly submitted that the petitioner has fundamental right under Article 19(1)(g) of the Constitution and the International covenants 1966 to carry on any trade of business and this right of the petitioners who are private persons have been taken away by the Order 2004. Mr. Rajeev Shrivastava learned counsel for the petitioner submitted that by the Order 2004 the State Government has created a monopoly in favour of the Co-operative Societies and other agencies specified in the said Order and has excluded all private persons from carrying on their business in furtherance of their right under Article 19(1)(g) of the Constitution and such creation of monopoly in favour of the Co-operative Societies and other agencies was not permissible under Article 19 (6) of the Constitution. He relied on the decision of Gujrat High Court in **Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another** (supra) in support of this submission. Mr. Sudhir Verma learned counsel for the petitioner

similarly submitted that the petitioners were carrying on the business of fair price shops and the Order 2004 in so far as it prohibits the petitioners from carrying on the business of fair price shops has affected the fundamental right to carry on their business under Article 19(1)(g) of the Constitution. In support of this submission he has cited the decision of the Punjab High Court in **Shivji Nathubhai Vs. Union of India, AIR 1959 Punjab 510.**

(31) This contention of the learned counsel appearing for the petitioners that the Order 2004 inasmuch as it excludes private persons altogether from carrying on the business or trade of fair price shops is wholly misconceived. This is because fair price shops are agencies of the State Government for supply of essential commodities to ration card-holders under the public distribution system and no citizen has a fundamental right to carry on trade or business through such agencies set up by the State Government for supply of essential commodities to ration card-holders under the public distribution system. This will be clear from the definitions of "Fair Price Shop" in Clauses 2 (1)(e) of the Order 2004 which are quoted herein below:

> **"2(1)(e):** "Fair Price Shop" means a shop setup by the State Government with agreement for supply of essential commodities to ration cardholders of Public Distribution System under this Order. {emphasis supplied}.

Moreover, by the Order 2004 the private persons are not prohibited altogether from carrying on business or trade in essential commodities. They can still carry on their trade or business of selling of essential commodities in terms of a licence issued under the orders made under Section 3 of the Act, but if they are private persons, they will not be allowed to run fair price shops set up by the State Government for supply of essential commodities to ration card-holders under the public distribution system. The Order 2004, therefore, does not in any way affect the fundamental right of the petitioners

who are private persons to carry on business or trade of essential commodities. This position of law has been clarified by the Supreme Court in **Sarkari Sasta Anaj Vikreta Sangh, Tehsil Bemetra and others Vs. State of Madhya Pradesh and others.** The relevant passage from the judgment of the Supreme Court in the said case is quoted herein below:

> "The fundamental right of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only, they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government took a policy decision to prefer co-operative societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do not see how we can possibly hold that there was any discrimination.

(32) In **District Collector, Hyderabad Vs. M/s. Ibrahim and Company and others** (supra) the State Government had passed a Government order dated 30th December 1964 by which the entire quota of sugar allotted to the cities of Hyderabad and Secunderabad was directed to be handed over exclusively to a Co-operative Society and it was mentioned in the Government Order that the Government had decided that Co-operative Society as the wholesale dealer in the district should be given the monopoly distribution. As a direct consequence of this Government Order, the allotment of sugar to the petitioners in that case was stopped and the Co-operative Society concerned became the only recognized dealer entitled to lift the entire quota for the purposes of distribution and sale in the twin cities. Thus, the stocks which were necessary for carrying on trade by recognized dealers were no longer available to the petitioners in that case who were

recognized dealers with the result that their trade in sugar came to a halt. It is on these facts that a Division Bench of Andhra Pradesh high Court held that the said Government Order dated 30/12/1964 issued by the State Government was an executive order which interfered with the proper working of Andhra Pradesh Sugar Dealers Licensing Order of 1963 and Sugar Control Order, 1963 and tends to hold in abeyance and defeat the rights of the traders which are expressly or by necessary implication recognized by the said Andhra Pradesh Sugar Dealers Licensing Order, 1963 and Andhra Pradesh Sugar Control Order 1963 and therefore violated the fundamental rights of the petitioners guaranteed by the Constitution of India under Article 19(1)(g). In the present case, as we have seen, the Order 2004 does not interfere with the fundamental right of the private persons to carry on business or trade in essential commodities in terms of a licence issued under the order made under Section 3 of the Act but it only excludes them from being appointed as fair price shop agents by the State Government for distribution of essential commodities and in particular foodstuffs to the ration card-holders under the public distribution system.

(33) Shivji Nathubhai Vs. Union of India (supra) cited by Mr. Sudhir Verma learned counsel for the petitioner is a decision on the Mines and Minerals (Regulation and Development) Act, 1948 and the Mineral Concession Rules, 1949 and in the said decision the Punjab High Court has held that the right to work a mine upon another's land is in no way analogous to the fundamental right of a citizen to carry on trade and buy and sell in the open market. The said decision does not in any way apply to the facts of the present case. In the said decision it has been held that the owner of immovable property has every right to refuse to lease it out to another and an intending lessee has no fundamental right to claim that the property should be leased out to him. Similarly, under the Order 2004, the State Government

can formulate its own scheme for excluding private persons from running fair price shops through which the Government distributes essential commodities at fair prices under the public distribution system and a private person cannot claim any fundamental right to run a fair price shop set up by the State Government under such public distribution system.

(34) Mr. Manindra Shrivastava, learned counsel for the petitioner ,next submitted that under Section 3 of the Act power has been vested in the Central Government to make an order for securing the equitable distribution and availability of essential commodities at fair prices and Section 5 of the Act enables the Central Government to delegate its power in relation to specific matters by a notified order to State Government. He submitted that the State Government, therefore, exercises the power under Section 3 of the Act as a delegate of the Central Government. He cited the decision of the Supreme Court in **Hamdard Dawakhana Vs. Union of India, AIR 1960 SC 554,** and in **Agricultural Market Committee Vs. Shalimar Chemical Works Ltd, (1997) 5 SCC 516,** for the proposition that a delegate cannot exceed the power conferred on it by the delegation. He also relied on the decision of the Supreme Court in the **District Collector, Chittoor and others Vs. The Chitoor District Groundnut Traders Association, AIR 1989 SC 989,** in which the Supreme Court has held that the State Government while making an order under Section 3 of the Act as a delegate of the Central Government is not entitled to exercise power in excess of the delegated powers and if any order is issued by the State Government in excess of the powers delegated to it such order would be illegal and void. Developing this argument, Mr. Shrivastava submitted that the Central Government has also framed the Public Distribution System (Control) Order, 2001 in which there is no provision whatsoever to the effect that private persons will not be allowed to run fair price shop. He referred to the definitions of "fair price shop" and "fair

price shop owner" in Clauses 2(j) & (k) of the Public Distribution System (Control) Order, 2001 made by the Central Government to show that it may also include a private person. He pointed out that Clause 14 of the said Public Distribution System (Control) Order, 2001 made by the Central Government further provides that the provisions of the said Order shall have effect notwithstanding anything to the contrary contained in any made Order by a State Government or by an Officer of the State Government before the commencement of the said Order 2001. He submitted that Clause 5 of the Annexe to the said Public Distribution System (Control) Order, 2001 further provides that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of the essential commodities and the licences to the fair price shop owner shall be issued under the said order and shall lay down the duties and responsibilities of the fair price shop owner. He submitted that the State Government, therefore, was only required to issue an order under Section 3 of the Act in terms of Clause 5 of the Annexe to the Public Distribution System (Control) Order, 2001 made by the Central Government providing for terms and conditions of the licences to the fair price shops and other matters as enumerated in the said Clause 5 of the Annexe to the Public Distribution System (Control) Order, 2001 could not introduce altogether new provision in such an order under Section 3 of the Act that private persons will not be allowed to run fair price shops in the State of Chhattisgarh. Hence Clause 9 (1) of the Order 2004 made by the State Government prohibiting allotment of fair price shops to private persons was in excess of the powers delegated to it by the Central Government under Section 5 of the Act and the Order 2004 should be held by the Court as ultra vires and void. Mr. Rajesh Pandey, learned counsel for the petitioner, further submitted that the word "person" in the definition of "fair price shop owner" in the Public Distribution System (Control) Order 2001 would include a natural

person and therefore a private individual could also be a "fair price shop owner" as per the said Order made by the Central Government.

(35) Mr. Prashant Mishra, learned Additional Advocate General, for the State of Chhattisgarh, on the other hand, submitted that the delegation of the power of the Central Government under Section 3 of the Act has been made to the State Governments by Order No. GSR 800, dated 9th June 1978 and in exercise of such delegated power the State Government has made the Order 2004 under Section 3(1) of the Act for securing equitable distribution and availability of food grains at fair prices to vulnerable sections of the society. He submitted that such delegated powers have to be exercised by the State Government subject to directions, if any, as may be issued by the Central Government and therefore the State Government cannot make an order under Section 3(1) of the Act in contravention of the directions of the Central Government. He submitted that there is no specific direction in the Public Distribution System (Control) Order, 2001 made by the Central Government to the effect that private persons should be allotted fair price shop by the State Government and for this reason the Order 2004 in so far it states that the fair price shops run by private persons will not be continued after the Order 2004 and shall be cancelled and allotted to agencies specified in the Order 2004 is not in contravention of the provisions of Public Distribution System (Control) Order, 2001.

(36) Section 5 of the Act which provides for delegation of the power of the Central Government to other authorities including the State Government is quoted herein below:

> "**5. Delegation of power:** - The Central Government, may by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and subject to such

conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer of authority subordinate to a State Government, as may be specified in the direction."

A reading of Section 5 of the Act quoted above shows that the Central Government by a notified order may direct that the power to make orders or issue notification under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by the authorities mentioned in the said Section and the State Government is one such authority. Hence, the powers of the State Government to make an order under Section 3 of the Act is to be exercised only in such matters and subject to such conditions as may be specified in the notified order of the delegation made by the Central Government under Section 5 of the Act. The Public Distribution System (Control) Order, 2001 made by the State Government does not direct that the power to make any order or issue a notification under Section 3 of the Act in relation to foodstuffs and other essential commodities sought to be distributed through the public distribution system shall also be exercisable by the State Government. Hence, the Public Distribution System (Control) Order, 2001 made by the Central Government cannot be held to be notified order delegating the power to make an order under Section 3 of the Act to the State Government in relation to foodstuffs or any other essential commodities. In other words, the Public Distribution System (Control) Order, 2001 made by the Central Government does not constitute the charter of delegation in favour of the State Government.

(37) The charter of delegation made by the Central Government in favour of the State Government in terms of the Section 5 of the Act to issue an order or notification under Section 3 in relation to foodstuffs is the Central Government Order No. GSR 800 dated 9th June, 1978 which is quoted herein below:

> **"Central Government Order No. G.S.R. 800, dated the 9th June 1978**
>
> **[Published in Gazette of India, Part II, Section 3, Sub-Section (1), Dated 17th June 1978/27 Jyaistha, 1909 (Saka)]**
>
> **MINISTRY OF AGRICULTURE AND IRRIGATION**
>
> **(Department of Food)**
>
> In exercise of the powers conferred by section 5 of th essential Commodities Act, 1955 (10 of 1955) and in supersession of the Order of the Government of India in the late Ministry of Agriculture (Department of Food) No. G.S.R. 316 (E), dated the 20th June 1972, the Central Government hereby directs that the power conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clause (a), (b), (c), (d), (e), (f), (g), (h), (i), (ii), and j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions:-
>
> (1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Centrai Government in this behalf;
>
> (2) that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposai of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (c), the State Government shall also obtain the prior concurrence of the Central Government; and
>
> (3) that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorities only an officer of Government."

A plain reading of the aforesaid Central Government Order No. G.S.R. 800 dated 9th June 1978 would show that the Central Government has delegated the power conferred on it by sub-section (1) of Section 3 of the Act in relation

to foodstuffs to the State Governments subject to the conditions specified in the said Order and the first condition specified in the said Order is that such powers would be exercisable by the State Government subject to such directions, if any, as may be issued by the Central Government in this behalf. The State Government, therefore, could make an order under sub-section (1) of the Section 3 of the Act for securing equitable distribution of foodstuffs and their availability at fair prices through public distribution system for vulnerable sections of the society in the State of Chhattisgarh, but while making such order it cannot transgress any directions made by the Central Government in the Public Distribution System (Control) Order, 2001. Clauses 2(j), (k) and 7 (1) of the Public Distribution System (Control) Order, 2001 and paragraph 5 of the Annexe to the said order are extracted hereinbelow:

> **"2 (j)** 'fair price shop' means a shop, which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act, to the ration card holders under the Public Distribution System;
>
> **(k)** 'fair price shop owner' means a person and includes a co-operative society or a corporation or a company of a state Government or a Gram Panchayat or any other body in whose name a shop has been licensed to distribute essential commodities under the Public Distribution System.
>
> **7. Licensing: - (1)** The procedure for issue of licenses or authorization to the fair price shops for the distribution of essential commodities under Public Distribution System and duties and responsibilities of the fair price shop owners shall be as per paragraph 5 of the Annexe to this Order.

Annexe TO THE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2001

5. Licensing: - State Governments shall issue an order under section 3 of the Act for regulating the sale and distribution of the essential commodities. The licenses to

the fair price shop owner shall be issued under the said order and shall lay down and the duties and responsibilities of the fair price shop owner. The responsibilities and duties of fair price shop owners shall include, *inter alia* :

(i) sale of essential commodities as per the entitlement of ration card holders at the retail issue prices fixed by the concerned State Government under the Public Distribution System:

(ii) display of information on a notice at a prominent place in the shop on daily basis regarding

(a) list of BPL and Antodaya beneficiaries,

(b) entitlement of essential commodities,

(c) scale of issue,

(d) retail issue prices,

(e) timings of opening and closing of the fair price shop,

(f) stock of essential commodities received during the month

(g) opening and closing stock of essential commodities and

(h) the authority for redressal of grievances/lodging complaints with respect to quality and quantity of essential commodities under the Public Distribution System;

(iii) maintenance of records of ration card holders (APL, BPL and Antyodaya), stock register, issue or sale register;

(iv) furnishing of copies of specified documents, namely, ration card register, stock register, sale register to the office of the Gram Panchayat or Nagar Palika or Vigilance Committee or any other body authorized by State Governments for the purpose;

(v) display of samples of foodgrains being supplied through the fair price shop;

(vi) production of books and records relating to the allotment and distribution of essential commodities to the inspecting agency and furnishing of such information as may be called for by the designated authority;

(vii) accountal of the actual distribution of essential commodities and the balance stock at the end of the month to the designated authority of the concerned State Government with a copy to the Gram Panchayat;

(viii) opening and closing of the fair price shop as per the prescribed timings displayed on the notice board.

A plain reading of the aforesaid clauses 2(j) and 2(k) of the Public Distribution System (Control) Order, 2001 made by the Central Government would show that fair price shop means a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act to the ration card holders under the public distribution system, and fair price shop owner means a person in whose name a shop has been licensed to distribute the essential commodities under the public distribution system. Clause 7 of the Public Distribution System (Control) Order, 2001 made by the Central Government further provides that the procedure for issue of licenses or authorization to the fair price shops for the distribution of essential commodities under public distribution system and duties and responsibilities of the fair price shop owners shall be as per paragraph 5 of the Annexe to the Order. Para 5 of the Annexe to the Order quoted above provides that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of the essential commodities and the license to the fair price shop owner shall be issued under the said order and

such licence shall lay down the duties and responsibilities of the fair price shop owner. It is thus clear that under the Public Distribution System (Control) Order, 2001 the Central Government has left it to the State Government to make an order under Section 3 of the Act for regulating the sale and distribution of essential commodities through the public distribution system to vulnerable sections of the society and to provide for issue of licences under such order made under Section 3 of the Act to persons incorporating the responsibilities and duties to fair price shop owners. The Central Government has left it to the State Government to decide as to the persons in whose favour the licences should be issued to run the fair price shops and it is for the State Government to decide as to whether such persons would be private persons or Co-operative Societies, Corporations, company, Gram Panchayat or any other body. There is nothing in the provisions of the Public Distribution System (Control) Order, 2001 directing that individuals or private persons are to be conferred licences to distribute essential commodities through fair price shop. The contention of the learned counsel for the petitioners that the Order 2004 made by the State Government is in excess of the power delegated to the State Government by the Central Government or is in contravention of the directions in the Public Distribution System (Control) Order, 2001 therefore has no merit.

(38) Mr. Kanak Tiwari, learned counsel for the petitioner submitted that Section 3(1) of the Act only provides for an opinion to be formed by the Central Government about the necessity or expediency of making any order for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices, or for providing for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein and Section 3 (2) of the Act provides for making of an order. According to Mr. Tiwari any order under Section 3 of the

Act has therefore to be made under Sub Section (2) of Section 3 of the Act and not under Sub-section (1) of Section 3 of the Act and the Order 2004 was thus an order under Sub-section (2) of Section 3 of the Act. He further submitted that the language of the Central Government Order No.GSR 800 dated 9th June 1978 would show that the power to make orders to provide for matters specified in Clauses (c) and (d) of Sub Section (2) of Section 3 of the Act in relation to foodstuffs can be exercised by the State Government subject to conditions that before making such order the State Government shall obtain prior concurrence of the Central Government. He pointed out that Clause (c) of Sub Section (2) provides for an order for controlling the price at which any essential commodity may be bought or sold and Clause (d) of Sub Section (2) of Section 3 of the Act provides for regulating by licences, permits or otherwise inter alia the transport of any essential commodity. He argued that the State Government, before making any order controlling the price at which an essential commodity may be bought or sold or regulating the licences, permits or otherwise the transport of any essential commodity, has to obtain the prior concurrence of the Central Government under the second condition mentioned in the Central Government Order No.GSR 800 dated 9th June, 1978. He pointed out that Clause 5 (10) of the Order 2004 provides for transportation of all essential commodities including foodstuffs and Clause 11(5) of the Order 2004 provides for sale of essential commodities including foodstuffs at retail issue price as has been specified from time to time by the State Government. He vehemently argued that these are provisions for controlling price of essential commodities and for regulating transport of essential commodities in the Order 2004 which could not have been made by the State Government without prior concurrence of the Central Government. In support of this submission he relied on the decision of the Supreme Court in **District Collector, Chittoor and others**

Vs. The Chitoor District Groundnut Traders Association (supra) and **Nagrik Upbhokta M. Manth Vs. Union of India and others, (2002) 5 SCC 466.**

(39) In reply, Mr. Prashant Mishra, learned Additional Advocate General submitted that the Order 2004 is not an order under sub-Section (2)(c) and (d) of Section 3 of the Act but is an order under sub-Section (1) of Section 3 of the Act for distribution and sale of essential commodities at fair prices through fair prices shops and hence no prior concurrence of the Central Government was required before making the Order 2004. He submitted that sub-Section (2) (c) of Section 3 of the Act provides for an order for controlling the price at which any essential commodity may be bought or sold, but the Order 2004 does not make any provision for controlling the price at which any essential commodities are bought or sold. He further pointed out that sub-Section 2 (d) of Section 3 of the Act provides for an order for regulating by licences, permits or otherwise transport of any essential commodity. But the Order 2004 does not provide for regulating the transport of any essential commodities by licence. He explained that the provisions in the Order 2004 are for sale by fair price shop owners at prices to be fixed by the State Government and for transport of the essential commodities but do not relate to control of price or regulation of transport of essential commodities. He relied on the decision of the Supreme Court in **K. Ramnathan vs. State of Tamil Nadu & Another, AIR 1985 SC 660** and in **Maharasthra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Others vs. State of Maharashtra & Others, 1995 Supp (3) SCC 475** in support of his aforesaid submissions that the Order 2004 is an order under sub-Section (1) of the Section 3 of the Act and not an order under sub-Section (2) (c) and (d) of Section 3 of the Act.

(40) Sub section (1) of Section 3 and Sub section (2) Clauses (c) and (d) on which the argument of Mr. Tiwari is based are quoted hereinbelow:

> "3. **Power to control production, supply distribution, etc., of essential commodities.** – (1) If the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.
>
> **(2)** Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) for controlling the price at which any essential commodity may be bought or sold;
>
> (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity."

Under sub-section (1) of Section 3 of the Act a general power has been vested in the Central Government to make an order providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability of fair prices. Sub-section (2) of Section 3 of the Act provides that without prejudice to the generality of the powers conferred by Sub section (1) such an order under Sub section (1) may provide for the different matters specified in different clauses therein. Interpreting Sub sections (1) and (2) of

Section 3 of the Act, the Supreme Court in **K. Ramnathan vs. State of Tamil Nadu & Another** (supra) has held that Sub Section (2) of Section 3 of the Act confers no fresh powers but is merely illustrative of the general powers conferred by Sub section (1) of Section 3 without exhausting the subjects in relation to which such powers can be exercised. In support of the said view the Supreme Court has quoted following observations of Shastri, J in an earlier decision in *Santosh Kumar Jain Vs. The State, AIR 1951 SC 201*, on the relevant functions of Sub sections (1) and (2) of Section 3 of the Act :

> "It is manifest that sub-s. (2) of s. 3 confers no further or other powers on the Central Government than what are conferred under sub-s. (1), for it is "an order made thereunder" that may provide for one or the other of the matters specifically enumerated in sub-s. (2) which are only illustrative, as such enumeration is "without prejudice to the generality of the powers conferred by sub-s. (1)."

Hence, the argument of Mr. Kanak Tiwari learned counsel for the petitioner that under Sub section (1) of Section 3 of the Act the Central Government only forms an opinion as to whether any order should be made providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices and that after formation of such opinion the order is passed only under sub section (2) of Section 3 of the Act is not correct. The Central Government can make an order under Sub section (1) of Section 3 of the Act providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity of for securing their equitable distribution and availability at fair prices and if the Central Government by a

notified order delegates the said power under Section 5 of the Act to the State Government, that the State Government can also pass similar order under Sub-section (1) of Section 3 of the Act.

(41) In fact, in exercise of such power under Section 3(1) of the Act as delegated to it under Section 5 of the Act by the Central Order No. GSR 800 dated 9th June 1978, the State Government appears to have made the Order 2004 providing for regulating the supply and distribution of foodstuffs for securing equitable distribution of foodstuffs and their availability at fair prices for the vulnerable sections of the society. The Order 2004 is titled "Chhattisgarh Public Distribution System (Control) order, 2004" and provides for a system for distribution of essential commodities to ration cardholders through the fair price shops such as rice, wheat, kerosene and salt etc. Clause 11 of the Order 2004 is titled "Responsibilities of Fair Price Shopkeeper" and sub clause (5) of Clause 11 provides as follows:

> "11. **Responsibilities of Fair Price Shopkeeper** -
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx
>
> (4) xxx xxx xxx
>
> (5) Fair Price Shopkeeper shall sell essential commodities in such quantities and at the retail issue price as may be specified from time to time by the State Government to those consumers whose ration cards have been registered at her/his shop. Fair Price Shopkeeper shall not sale any essential commodities without ration card."

The aforesaid sub clause (5) of Clause 11 of the Order 2004, in our considered opinion, is not a provision for controlling the price at which any essential commodity may be bought or sold, but is a provision imposing a responsibility or duty upon fair price owner to sell essential commodities at retail issue prices fixed by the State Government under the public distribution

system and this provision has been made in Clause 11(5) of the Order 2004 in view of the directions in para 5 of the Annexe to the Public Distribution System (Control) Order, 2001 made by the Central Government that the responsibilities and duties of fair price shop owner shall include inter alia the sale of essential commodities as per entitlement of ration cardholders at retail issue price fixed by the concerned State Government under the public distribution system. Sub clause (10) of Clause 5 of the Order 2004 further provides as under:

"5. Lifting Storage, Transportation and distribution:-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) The designated authority of Collectors, District Manager, Chhattisgarh State Civil Supplies Corporation Limited and concerned agencies engaged in transportation of all essential commodities covered under the PDS including foodgrains, kerosene, sugar and salt shall ensure that stocks of essential commodities under the Public Distribution System, as issued from the Chhattisgarh State Civil Supplies Corporation Limited godowns and godowns of other agencies dealing with kerosene are not replaced by stocks of inferior quality during storage, transit or any other stage."

The aforesaid provision in Sub Clause (10) of Clause 5 of the Order 2004 only provides that the agencies engaged in transportation of all essential commodities covered under the PDS shall ensure that the stocks of essential commodities under the Public Distribution System are not replaced by stocks of inferior quality during storage, transit or any other stage. The aforesaid provision in Clause 5 (10) of the Order 2004, in our considered opinion, is not

a provision for regulating by licences, permits or otherwise the transport of any essential commodity within the meaning of Clause (d) of sub-Section (2) of Section 3 of the Act. The aforesaid provision in sub-Clause (10) of Clause 5 of the Order 2004 only provides that the concerned agencies engaged in transportation of all essential commodities under the Public Distribution System would ensure that the essential commodities being transported are not replaced by stocks of inferior quality and does not regulate transportation of essential commodities. This provision in sub-Clause (10) of Clause 5 of the Order 2004 has been made in consonance with the directions in Clause 4(10) of the Public Distribution System (Control) Order, 2001 made by the Central Government that the State Government shall ensure that the stocks of essential commodities under the Public Distribution System, as issued from the FCI godowns, are not replaced by stocks of inferior quality till the delivery of the ration card holder. Mr. Tiwari is thus not right in making the submission that the Order 2004 makes provisions for matters specified in Clauses (c) and (d) of Section 3(2) of the Act for controlling prices at which essential commodities are bought or sold and for regulating transport of essential commodities. There is, therefore, no merit in the contention of Mr. Kanak Tiwari, learned counsel for the petitioner that the Order 2004 required prior concurrence of the Central Government and in the absence of such prior concurrence of the Central Government, the same was illegal and void.

(42) Mr. Kanak Tiwari, learned counsel for the petitioners, submitted that Sub-clause (4)(c) of Clause 9 of the Order 2004 provides that Other Consumer Co=operative Societies shall be registered under Chhattisgarh Co-operative Societies Act, 1960 and Sub-clause (5) of Clause 9 of the Order 2004 further provides that fair price shops shall be allotted to only those other Co-operative Societies which are registered on or before 1st November 2000. He submitted that the effect of these provisions in the

Order 2004 is that the Consumer Co-operative Societies and Other Co-operative Societies which have been registered under the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 or registered after 1st November 2000 will not be allotted fair price shops under the Order 2004. In this context, he pointed out that the State Government of Chhattisgarh was created on 1st November 2000 and there is absolutely no reason as to why Other Co-operative Societies including the Consumer Co-operatives registered under the said Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 or registered after 1st November 2000 would not be allotted fair price shops by the State Government. He submitted that the petitioners in Writ Petition No.1397 of 2005 were registered after 1st November 2000 under the said Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 and have been allotted fair price shops by the State Government and have entered into agreements with the State Government for running the fair price shops, but on account of the aforesaid provisions in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 the petitioners will not be allowed to run the fair price shops. He pointed out that although the petitioners have challenged the said provisions in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 in para 6: vii of W.P. No.1397 of 2005, no return has been filed by the State Government in the said W.P. No.1397 of 2005.

(43) We have perused the averments and grounds taken in the aforesaid W.P. No.1397 of 2005 and we find that although the provisions of Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 have been challenged in para No.6: vii of the said writ petition as illegal and arbitrary, no reply has been filed on behalf of the State of Chhattisgarh on the said challenge. On a reading of the said Sub-clause (4)(c) of Clause 9 of the Order 2004 it appears that the Consumer Co-operative Societies which would be eligible for allotment of fair price shops under the Order 2004 have

to be registered under the Chhattisgarh Co-operative Societies Act, 1960. Hence, Consumer Co-operative Societies which have been registered under the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 would not be eligible for such allotment of fair price shops under the Order 2004. No reason whatsoever has been indicated by the State of Chhattisgarh in its reply as to why the Consumer Co-operatives which have been registered under the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 would not be eligible for allotment of fair price shops under the Order 2004. Similarly, on a reading of Sub-clause (5) of Clause 9 of the Order 2004 it appears that the other Co-operative Societies would be eligible for allotment of fair price shops only if they are registered on or before 1st November 2000 but would not be eligible for consideration for allotment of fair price shops under the Order 2004 if they are registered after 1st November 2000. No reason whatsoever has been indicated by the State of Chhattisgarh in its reply as to why Other Co-operative Societies registered after 1st November 2000 would not be eligible for allotment of fair price shops. There is, therefore, no rational nexus between the differentia adopted in classifying Co-operative Societies in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 for allotment of fair price shops and the said provisions in Sub-clauses (4) and (5) of Clause 9 of the Order 2004 are, in our considered opinion, arbitrary and discriminatory and violative of the equal protection clause under Article 14 of the Constitution.

(44) In the result, we hold that :-

(i) the provisions in Clause 9(1) of the Order 2004 that fair price shops run by private persons shall not be continued and within six months from the commencement of the Order, fair price shops run by private persons shall be cancelled are not discriminatory and are not violative of Article 14 of the Constitution.

(ii) the contract between the petitioners who are private persons and the State Government in so far as it provides for running fair price shops by the petitioners who are private persons have become unlawful after the expiry of six months' period from the date of enforcement of the Order 2004 and have to be cancelled.

(iii) The provisions of Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 in so far as they provide that Consumer Co-operatives which are not registered under the Chhattisgarh Co-operative Societies Act, 1960 or which are registered after 1st November 2000 will not be allotted fair price shops are ultra vires Article 14 of the Constitution.

(iv) the provision in Sub Clauses (3) and (4) of Clause 9 of the Order 2004 for allotment of fair price shops to primary Credit Co-operative Societies is ultra vires the Chhattisgarh Co-operative Societies Act, 1960 and only those out of "Other Co-operative Societies" can be allotted fair price shops under the Order 2004 which are permitted under the Chhattisgarh Co-operative Societies Act, 1960 or the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 to run fair price shops.

(v) Co-operative Societies which have been running fair price shops prior to the Order 2004 will continue to run the fair price shops in terms of the agreement between the Co-operative Societies and the State Government for the full period for which the agreement has been made and allotment made in their favour can be cancelled only in terms of the said agreement.

(vi) the provisions in Sub Clauses (3) and (4) of Clause 9 of the Order 2004 for allotting fair price shops to LAMPS, Gram Panchayats, Women's Self Help Groups and Forest Protection Committees are valid, but the provisions in the said Sub Clauses (3) and (4) of Clause 9 of the Order 2004 providing for reservation and priority in favour of some of the specified agencies in the matter of allotment of fair price shops are ultra vires Article 14 of the Constitution.

(vii) The agencies specified in the Order 2004 are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the guideline to be followed for making the allotment of fair price shops as indicated in Section 3 of the Act and the Order 2004 is that fair price shop would be allotted to an agency specified in the Order 2004 which can best distribute essential commodities to the ration cardholders at fair prices in any particular area.

(viii) Sub clause (3)(c) of Clause 9 in so far as it provides for appointment of all sales persons in the fair price shops operating in ITDP areas from BPL families of local tribal communities is ultra vires Article 14 of the Constitution.

(ix) Sub clause (7) of Clause 9 of the Order 2004 in so far as it provides for appointment of sales persons in fair price shops in other areas only from among Scheduled Castes and Other Backward Castes is ultra vires Article 14 of the Constitution.

The writ petitions are disposed of with the aforesaid declarations and directions and the interim orders passed by the Court stand vacated. Considering the facts and circumstances of the case, however, the parties shall bear their own cost.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Brajesh*